

NOTICE

Memorandum decisions of this Court do not create legal precedent. See Alaska Appellate Rule 214(d) and Paragraph 7 of the Guidelines for Publication of Court of Appeals Decisions (Court of Appeals Order No. 3). Accordingly, this memorandum decision may not be cited as binding authority for any proposition of law.

IN THE COURT OF APPEALS OF THE STATE OF ALASKA

JAMES R. SIEGLE,

Appellant,

v.

STATE OF ALASKA,

Appellee.

Court of Appeals No. A-11453
Trial Court No. 3AN-10-4009 CR

MEMORANDUM OPINION

No. 6346 — June 1, 2016

Appeal from the Superior Court, Third Judicial District,
Anchorage, Philip R. Volland, Judge.

Appearances: Shelley K. Chaffin, Law Office of Shelley K.
Chaffin, Anchorage, for the Appellant. Donald Soderstrom,
Assistant Attorney General, Office of Criminal Appeals,
Anchorage, and Michael C. Geraghty, Attorney General, Juneau,
for the Appellee.

Before: Mannheimer, Chief Judge, Allard, Judge, and Hanley,
District Court Judge.*

Judge ALLARD.

James R. Siegle was convicted of first-degree sexual assault and fourth-degree assault for sexually and physically assaulting his girlfriend, S.N. Siegle challenges his convictions on appeal, arguing that the superior court erred when it

* Sitting by assignment made pursuant to Article IV, Section 16 of the Alaska Constitution and Administrative Rule 24(d).

allowed the State to present evidence that Siegle had previously assaulted S.N. Siegle also argues that the court committed plain error by allowing the State to introduce S.N.'s hearsay statements about the assault that were not admissible as first-complaint evidence. For the reasons explained here, we conclude that neither claim has merit. Accordingly, we uphold Siegle's convictions.

The State has filed a cross-appeal (File No. A-11473) challenging the lawfulness of Siegle's sentence. We will address the State's cross-appeal in a separate decision.

Factual background and prior proceedings

In April 2010 S.N. told the police that her boyfriend, James Siegle, hit her and forced her to have oral and vaginal sex with him. Based on this conduct, Siegle was charged with two counts of first-degree sexual assault and one count of fourth-degree assault.

At trial, S.N. testified that she and Siegle had been in a relationship for two years, and that they regularly drank together at the bars on Fourth Avenue. S.N. said that, on the day of the assault, she had been drinking and later went shopping at Walmart with Siegle. After they left Walmart, Siegle asked S.N. for oral sex in his truck. S.N. refused, and Siegle kicked her out of the truck at the Panhandle Bar. S.N. continued to drink at the bar while texting Siegle about his other girlfriends and his desire for sex.

After several hours at the bar, S.N. walked to Siegle's apartment. According to S.N., Siegle again asked for oral sex, and she again refused. S.N. testified that Siegle then forced himself on her by putting his penis in her mouth. She stated that she tried to push him off; they struggled and he punched her in the eye. Siegle then pulled down her pants, cut or tore her underwear, and put his penis in her vagina. S.N.

testified that she cried and told Siegle to stop but he continued to have sex with her and he called her names.

Afterward, S.N. and Siegle left the apartment together and walked to the Panhandle Bar. The Panhandle bouncer refused to let them in because they were on the list of people who could not drink any more that day. The bouncer noticed S.N.'s bruised eye. At trial, the bouncer testified that S.N. and Siegle had been asked to leave the bar either earlier that day or the day before because they were arguing and Siegle was acting aggressively towards S.N.

S.N. then went to the Avenue Bar alone. At the Avenue Bar, S.N. told the bartender that her boyfriend had beaten and raped her. The bartender called the police. At trial, the bartender testified to S.N.'s statements without defense objection.

The police officer who responded to the 911 call found S.N. to be intoxicated, upset, and obviously traumatized, but she was able to articulate what had happened. S.N. gave a statement to the police in which she reported that Siegle had beaten her up and forced her to have oral and vaginal sex with him. A recording of this statement was later played for the jury without defense objection.

Following her statement to the police, S.N. was examined by a sexual assault nurse. At trial, the nurse testified that she observed recent swelling and bruising around S.N.'s left eye and bruising and abrasions on her back and arms, some of which appeared recent. The nurse testified that injuries to S.N.'s genital area were consistent with either consensual or non-consensual sexual intercourse.

A few sperm were found on S.N.'s vaginal smear but not enough to obtain a DNA profile. (S.N. had reported that Siegle did not ejaculate.) All of the DNA collected from Siegle's penis was his own.

At trial, the jury heard a recording of a police interview with Siegle. In the interview, Siegle initially denied having oral or vaginal sex with S.N. that night. But

when the detective told Siegle that it would be possible to detect S.N.'s saliva on his penis, Siegle admitted that his penis had been in S.N.'s mouth briefly. Siegle said that this contact was consensual.

The jury also heard testimony from S.N. and a police officer about a separate incident that occurred about a year earlier, in 2009. S.N. testified that, in that earlier incident, Siegle threw her over the bed and stepped on her throat after she refused to perform oral sex. Siegle then pushed her out of the hotel room and she called the police.

The police officer who responded to this earlier incident testified that S.N. had bruises on her chest but no apparent injury to her neck. When the officer contacted Siegle in his hotel room, he appeared to have just woken up and claimed he did not know S.N. The officer was then called away for another disturbance involving a knife. The officer testified that he did not engage in any follow-up or file any charges against Siegle because he was unable to connect S.N. to Siegle and because S.N.'s injuries did not match her version of events.

At the conclusion of the trial, the jury convicted Siegle of first-degree sexual assault for orally penetrating S.N. without her consent and fourth-degree assault for striking her in the eye. The jury acquitted Siegle of the other first-degree sexual assault count involving vaginal penetration.

At sentencing, the superior court found that it would be manifestly unjust to sentence Siegle, who was in his fifties, to a sentence within the presumptive range of 20 to 30 years. The superior court based this finding on its evaluation of Siegle's lack of prior criminal history, the evidence at trial, and the dysfunctional relationship between S.N. and Siegle. The court therefore referred Siegle's case to the state wide three-judge sentencing panel. The three-judge panel agreed that a sentence within the presumptive range would be manifestly unjust in Siegle's case, and sentenced Siegle to 20 years with

5 years suspended (15 years to serve) for the first-degree sexual assault conviction and 30 days for the fourth-degree assault conviction.

Siegle now appeals.

Why we conclude that the superior court did not abuse its discretion when it allowed the State to introduce evidence of the prior 2009 incident

Siegle argues that the superior court erred in allowing the jury to hear evidence that he assaulted S.N. in 2009 after she refused to perform oral sex on him.

As a general rule, evidence of a defendant's other crimes and bad acts are not admissible to prove the defendant's propensity to commit similar acts.¹ But when a defendant is charged with a crime of domestic violence, Alaska Evidence Rule 404(b)(4) authorizes courts to admit evidence of the defendant's other acts of domestic violence to prove the defendant's propensity to commit acts of domestic violence, and to prove that the defendant acted true to that propensity during the incident in question.²

Before such evidence can be admitted, however, the trial court must first determine that its probative value outweighs its potential to unfairly prejudice the jury.³ In *Bingaman v. State*, we outlined a number of factors that trial courts must consider before admitting evidence of other acts of domestic violence, including, but not limited to: (1) the strength of the government's evidence that the defendant actually committed the other acts; (2) the character trait the other acts tend to prove; and (3) whether this character trait is directly relevant to a material issue in the case and how strongly the

¹ Alaska Evid. R. 404(b)(1) ("Evidence of other crimes, wrongs, or acts is not admissible if the sole purpose for offering the evidence is to prove the character of a person in order to show that the person acted in conformity therewith.").

² *Bingaman v. State*, 76 P.3d 398, 408 (Alaska App. 2003).

³ *Id.* at 414.

other acts tend to prove this trait.⁴ We also directed trial courts to consider the recency or remoteness of the other bad acts, as well as the similarity between the prior acts and the act that the defendant is currently charged with.⁵ Trial courts are additionally required to consider how necessary the evidence is to prove the government’s case, the length of time required to litigate the defendant’s other acts, and the likelihood that evidence of the other acts will distract the jury from the main issues in the case or lead the jury to decide the case on improper grounds.⁶

On appeal, Siegle argues that the court abused its discretion in allowing the State to introduce evidence of the 2009 incident. Siegle claims the evidence was weak, irrelevant, and unfairly prejudicial.

We have reviewed the State’s offer of proof, the trial court’s analysis under the *Bingaman* factors, and the evidence that was actually presented to the jury at trial. We conclude, based on this review, that the court acted within its discretion when it admitted this evidence under Rule 404(b)(4). Contrary to Siegle’s claim on appeal, the evidence that the prior assault had occurred, although disputed, was sufficient to qualify for admission as a prior act of domestic violence under Rule 404(b)(4).⁷ S.N. testified that, in the prior incident, Siegle threw her over the bed and stepped on her throat after she refused him oral sex. The trial court found that this prior incident was relevant to Siegle’s propensity to become violent after S.N. denied him oral sex. And S.N.’s

⁴ *Id.* at 415.

⁵ *Id.*

⁶ *Id.* at 416.

⁷ *See Bennett v. Anchorage*, 205 P.3d 1113, 1117 (Alaska App. 2009) (“When the relevance of evidence of a prior act of domestic violence hinges on resolution of a factual dispute as to the occurrence or nature of the prior act, Evidence Rule 404(b) governs the determination of this preliminary fact.”).

testimony, if believed, was sufficient evidence from which a reasonable juror could have concluded that the prior act happened, even though there was other evidence suggesting that it did not happen in the manner S.N. claimed.⁸ Given these circumstances, we conclude that the court did not abuse its discretion in admitting this evidence under Evidence Rule 404(b)(4) so that the jury could evaluate the credibility of S.N.'s account for itself and decide what weight, if any, to give to this prior incident.

(Because we conclude that the superior court did not abuse its discretion in admitting evidence of the 2009 incident under Evidence Rule 404(b)(4), we do not reach Siegle's claims that this evidence was inadmissible under Evidence Rules 404(b)(1) and 404(b)(3).)

Why we conclude that the trial court did not commit plain error when it allowed the State to introduce S.N.'s statements to the police and nurse

Siegle argues that the trial court committed plain error by allowing the State to offer evidence that S.N. told several people that Siegle had sexually assaulted her.

Under the "first complaint" doctrine, evidence of a victim's initial report of sexual assault is admissible for a non-hearsay purpose: to establish that the victim had reported the sexual assault.⁹ The doctrine "is grounded on the view that, in sexual assault cases, evidence of the victim's initial report is necessary to overcome the inference of silence that might otherwise inaccurately be drawn by the jury."¹⁰

Siegle does not dispute that S.N.'s initial statement to the bartender was properly admitted under the first-complaint doctrine. But he contends that S.N.'s later

⁸ *Id.*

⁹ *Greenway v. State*, 626 P.2d 1060, 1060-61 (Alaska 1980); *Nitz v. State*, 720 P.2d 55, 62 (Alaska App. 1986).

¹⁰ *Nitz*, 720 P.2d at 62.

statements to various police officers and the nurse should have been excluded because they were not admissible either as first complaints of sexual assault or under any other hearsay exception.¹¹

But hearsay is admissible if the opposing party does not object to its admission,¹² and Siegle’s trial attorney never objected to the admission of these hearsay statements. Moreover, we typically do not review this type of claim for plain error — unless the error can be shown to have affected the defendant’s constitutional rights.¹³

On appeal, Siegle asserts, in a conclusory fashion, that admission of S.N.’s otherwise inadmissible hearsay statements deprived him of a fair trial. But we perceive no constitutional violation here. S.N. testified at trial and was rigorously cross-examined by Siegle’s attorney about various inconsistencies in these prior statements. There was therefore no violation of Siegle’s right to confrontation and the defense was able to use the inconsistencies of these various statements to its advantage during closing argument. In contrast, the prior statements played a minor role in the prosecution’s theory of the case and were barely mentioned during the prosecutor’s closing argument. We therefore reject Siegle’s claim that admission of these statements violated his constitutional rights.

¹¹ Alaska Evidence Rule 801(d)(1)(B) provides that a statement is not hearsay if the declarant testifies that the statement is “consistent with the declarant’s testimony and is offered to rebut an express or implied charge against the declarant of recent fabrication or improper influence or motive[.]”

¹² See *Byrd v. State*, 626 P.2d 1057, 1058 (Alaska 1980); *Christian v. State*, 276 P.3d 479, 489 (Alaska App. 2012).

¹³ See *Cassell v. State*, 645 P.2d 219, 221 (Alaska App. 1982) (explaining that because it is not error to admit hearsay in the absence of a timely objection, “the application of the plain error doctrine will rarely, if ever, be appropriate on this issue at the appellate level.”).

Conclusion

We AFFIRM Siegle's convictions. We will address the sentencing issues raised by the State in a separate opinion.